

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FIELDTURF USA and TARKETT INC.,

Plaintiff,

Case No. 10-cv-12492

v.

HONORABLE STEPHEN J. MURPHY, III

ASTROTURF LLC,

Defendant.

_____ /

**ORDER ADOPTING DISCOVERY MASTER'S
REPORT AND RECOMMENDATION** (document no. 367) **and**
DENYING FIELDTURF'S MOTION TO EXCLUDE (document no. 368)

The current issue is whether Seymour Tomarin may testify at trial. Astroturf disclosed Tomarin as a potential witness in 2011, but stated that they did not have his contact information. Shortly before trial, Astroturf once again disclosed its intent to call Tomarin as a witness. At that point, Fieldturf served a subpoena upon Tomarin and sought to preclude him from testifying. The Discovery Master quashed the subpoena, reasoning that Fieldturf had sufficient evidence to find Tomarin during fact discovery. He also denied Fieldturf's motion to preclude Tomarin from testifying, but allowed Fieldturf to depose him. At the deposition, Tomarin revealed that he had a business relationship with Astroturf and was in regular contact with Astroturf's employees. And he subsequently turned over emails and phone logs showing extensive contact with Astroturf.

For the reasons stated in the Discovery Master's Report and Recommendation, the Court will deny Fieldturf's motion to exclude Tomarin's testimony under Civil Rule 37. Astroturf disclosed Tomarin four years ago and Fieldturf had sufficient information to find him. Furthermore, Fieldturf deposed Tomarin on September 21. The Court will therefore allow Tomarin to testify with the following limitations:

- Tomarin is not an expert witness under Rule of Evidence 702 and shall not offer an opinion regarding infringement, anticipation or obviousness. The witness may not employ those terms during his testimony.

- Tomarin will not testify about Jean Prevost, except to the extent he has first hand knowledge to offer, like his conversations with Prevost.

- Tomarin may also testify about the fields that he personally installed and the two patents that he invented (the '653 and '953 patents).

ORDER

WHEREFORE, it is hereby **ORDERED** that Fieldturf's Motion to Exclude Tomarin's Testimony (document no. 368) is **DENIED**.

IT IS FURTHER ORDERED that the Discovery Master's Report and Recommendation (document no. 367) is **ADOPTED**.

SO ORDERED.

s/Stephen J. Murphy, III
STEPHEN J. MURPHY, III
United States District Judge

Dated: October 2, 2015

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on October 2, 2015, by electronic and/or ordinary mail.

s/Carol Cohron
Case Manager